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February 18, 2021

BY ECF

Honorable Katharine H. Parker
United States Magistrate Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

MEMO ENDORSED

Re: Curtis A. McDaniel v. Evangelista, et al., 19 Civ. 7680 (AJN) (KHP)

Curtis McDaniel v. City of New York, et al., 20 Civ. 995 (PGG) (SN)

Your Honor:

I am the attorney in the office of James E. Johnson, Corporation Counsel of the City of New York, assigned to the above referenced matters. Defendants the City of New York, Febres, and Evangelista respectfully request (1) that the deadline for defendants Febres and Evangelista to respond to the Complaint in Civil Docket No. 19 Civ. 7680 (hereinafter “McDaniel III”¹) be enlarged until March 8, 2021, when defendant City’s response to the Complaint in Civil Docket No. 20 Civ. 995 (hereinafter “McDaniel IV”) is due;² and (2) that the initial conference scheduled for February 25, 2021 for both matters be adjourned until after March 8, 2021, so that discovery can be coordinated in both matters after defendants in both cases have responded to the operative complaints. As plaintiff is incarcerated, defendant was unable to obtain his consent. However, defendant respectfully submits that far from prejudicing plaintiff, the sought relief will assist plaintiff in pursuing his claims more efficiently and expeditiously.

¹ Plaintiff has two (2) earlier cases pending in the Southern District of New York that include allegations against defendant City and/or its employees.

² The Court’s Order of Service dated December 21, 2020 ordered the U.S. Marshals Service to effect service upon defendant City of New York. *See* Civil Docket Sheet Entry No. 11. However, the text description of that Order on the Civil Docket Sheet states, “Waiver of Service due by 1/20/2021.” *Id.* On January 7, 2021, Assistant Corporation Counsel Peter Bocker filed a notice of appearance on behalf of defendant City, thereby waiving service of process for the City. *See* Civil Docket Sheet Entry No. 15. Thus, defendant City’s response to the Complaint is due sixty (60) days later, on March 8, 2021.

By way of background, plaintiff Curtis McDaniel, who is proceeding *pro se*, filed a Second Amended Complaint (“SAC”) in *McDaniel III* on January 22, 2020, after being ordered by the Court to amend two separate times. *See McDaniel III* Civil Docket Sheet Entry No. 14. The only remaining defendants in that action are New York City Police Department (“NYPD”) Officers Nicholas Evangelista and Julian Febres. *See McDaniel III* Civil Docket Sheet Entry No. 17.

Plaintiff filed an Amended Complaint (“AC”) in *McDaniel IV* on October 5, 2020, after being ordered to amend his initial Complaint. *See McDaniel III* Civil Docket Sheet Entry No. 9. Construing the AC liberally, plaintiff appears to bring claims for false arrest, malicious prosecution, and unlawful search and seizure against the City of New York, four (4) NYPD John Doe officers, and two (2) NYPD Jane Doe officers. *See id.*

On February 14, 2021, defendant City moved to transfer and consolidate *McDaniel IV* with *McDaniel III* in light of common questions of fact and law. *See McDaniel III* Civil Docket Sheet Entry No. 48; *see also McDaniel IV* Civil Docket Sheet Entry No. 17. In that same motion, defendant City also requested that the time for defendants Febres and Evangelista to respond to the SAC in *McDaniel III* be enlarged from February 16, 2021 until March 8, 2021, the date defendant City’s Answer in *McDaniel IV* is due, to place the cases’ schedules on the same track. *See id.* at pp. 1– 2, 5. Defendant City also requested that the initial conference scheduled in *McDaniel III* for February 26, 2021 be adjourned until some time after March 8, 2021, so that it can occur after the defendants have first answered plaintiff’s complaints. *See id.*

On February 16, 2021, *McDaniel III* and *McDaniel IV* were marked as related, *McDaniel IV* was reassigned to the Honorable Alison J. Nathan, and referred to Your Honor for general pretrial purposes. *See McDaniel IV* Civil Docket Sheet Text Entries dated February 16, 2021. On February 17, 2021, an initial conference for *McDaniel IV* was scheduled to take place on February 26, 2021, at the same time as the initial conference currently scheduled in *McDaniel III*. *See Civil Docket Sheet Entry No. 18.* To date, the other requests contained in the February 14th motion have not been specifically addressed.

Accordingly, defendants respectfully renew their prior requests for (1) defendants Febres and Evangelista’s responses to the SAC in *McDaniel III* to be due on March 8, 2021, the same date that defendant City’s response to the AC in *McDaniel IV* is due, and (2) an adjournment of the initial conference now scheduled for both cases on February 26, 2021 until after the defendants have filed their responses to the operative complaints by March 8, 2021. Defendants believe these changes will help the cases proceed in tandem, will prevent the parties from having to dive into discovery before plaintiff receives responses to his complaints, and will thus allow for the litigation to develop more efficiently for the Court and all parties.

Thank you for your consideration.

Respectfully submitted,

Jessica C. Engle /S/
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Assistant Corporation Counsel

CC: **BY FIRST CLASS MAIL**
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The telephonic Initial Case Management Conferences in this matter scheduled for Thursday, February 25, 2021 at 11:00 a.m. are hereby rescheduled to Thursday, April 1, 2021 at 12:00 p.m.

The deadline for Defendants Febres and Evangelista to respond to the Complaint in Civil Docket No. 19 Civ. 7680 is hereby extended to March 8, 2021

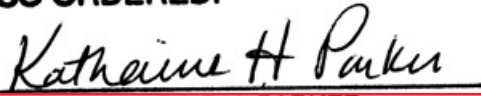
It is hereby ORDERED that the Warden or other official in charge of the Bare Hill Correctional Facility produce plaintiff Curtis McDaniel, Inmate Number 20-A-0242, on April 1, 2021, no later than 12:00 p.m., to a suitable location within the Downstate Correctional Facility that is equipped with a telephone, for the purpose of participating by telephone in a conference with the Court and defendants' counsel. If the scheduled time and date presents a hardship, the Warden or the Warden's designee should promptly inform chambers by calling (212) 805-0234.

The Parties are directed to review Judge Parker's Individual Rules of Practice in Civil Cases attached to this order. Plaintiff is directed to complete the Proposed Case Management Plan for Pro Se Plaintiffs and mail it to The Honorable Katharine H. Parker, U.S. District Court, 500 Pearl Street Room 750, New York, New York 10007 one week before the scheduled conference.

Defendants' counsel must: (1) send this Order to the Warden immediately; (2) contact the Downstate Correctional Facility to arrange the call and determine the telephone number at which the plaintiff will be reachable at the above time and date; (3) complete the Proposed Case Management Plan For Pro Se Plaintiffs and e-mail it to Parker_NYSDChambers@nysd.uscourts.gov, and (4) telephone chambers at (212) 805-0234, with the plaintiff on the line, at the time and date of the conference.

The Clerk of Court is requested to mail a copy of this order to the plaintiff.

SO ORDERED:


HON. KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE

02/19/2021